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INFORMATION PAPER

MCJA-OSC
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SUBJECT: Temporary Disability Retired List (TDRL) Reevaluation Process and Services Provided by the Office of Soldiers' Counsel (OSC)

1. Purpose. Provides information about the TDRL reevaluation process and services provided by the OSC. The OSC consists of attorneys and paralegals, both uniformed and civilian, who can offer you information, advice, and representation to enable you to make informed decisions and fully participate in your TDRL reevaluation process.

2. Frequently Asked Questions.

a. What is the TDRL? The TDRL is a list of medically retired Soldiers with at least one medical condition that has not sufficiently stabilized for a permanent assessment. Soldiers on the TDRL are temporarily retired and maintain a civilian life. The initial Physical Evaluation Board (PEB) decision which placed you on the TDRL identified a timeframe for the TDRL reevaluation. You will be notified about the scheduling of your TDRL reevaluation. Reexaminations are performed by physicians and generally occur at least once every 18 months. However, depending on your condition, your TDRL reevaluation could be scheduled as soon as six months following your separation date. The Army will compensate you for the travel expenses necessary to comply with the reexamination requirements. Based on the new examination and medical records, the PEB will determine whether your condition currently renders you fit or unfit. If you are unfit, the PEB, not the Department of Veterans Affairs (VA), will determine the disability rating for your unfitting condition.

b. What to expect? Following your reevaluation, if your condition has stabilized, the PEB will issue a decision. The PEB may decide to permanently retire you, separate you with severance pay, or find you fit for duty. If your condition remains unstable, the PEB may keep you on the TDRL. You will be permanently retired if your unfitting condition has stabilized, you remain unfit, and your combined Army disability rating is at least 30 percent or you have over 20 years of qualifying service. You will be separated with severance pay if your unfitting condition has stabilized, you remain unfit, and your Army disability rating is less than 30 percent.

c. What are my rights during the TDRL process? You have the right to seek free legal counsel through the OSC for assistance with your TDRL case. You have the right to review, comment, and appeal the TDRL examination before it is sent to the PEB. When you receive the PEB decision, you can demand a formal PEB hearing with or without personal appearance. You can also appeal the PEB decision in writing. After the final PEB decision, you may appeal your case to the Army Physical Disability Agency and, if necessary, to the Army Board for Correction of Military Records.

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d. How can the OSC assist me? The OSC is independent of the Medical Evaluation Board (MEB) and the PEB. The duty of the OSC is to advise and represent individuals undergoing the disability evaluation system. The attorneys and paralegals of the OSC are trained and qualified professionals who are available to assist you throughout the TDRL reevaluation process which includes the medical examination and PEB review process. The OSC has offices at almost every military treatment facility (MTF) in the Army. Through research, negotiation, and advocacy, OSC attorneys work diligently to ensure that you, our client, are able to make informed decisions aimed at achieving a beneficial outcome in your case. All information you provide to OSC attorneys and paralegals is privileged and confidential and can only be disclosed with your permission.

e. What else can the OSC do for me? The OSC is available to ensure that you are aware of your rights, options, and possible outcomes. This will help you decide whether to fight to return to duty or to pursue a medical separation. As you progress through the process, OSC attorneys can provide more specific advice such as whether it is appropriate to appeal a TDRL reexamination or whether it is advisable to request a formal PEB hearing. If a formal PEB hearing is held, OSC attorneys will accompany you at the hearing and advocate for your desired outcome.

f. How do I contact the OSC? Regardless of where you are in the process, you can consult the OSC attorneys and paralegals. For more information, visit the OSC website at <https://www.jagcnet.army.mil/otjagosc> or ask your Physical Evaluation Board Liaison Officer (PEBLO) for OSC contact information.

g. The PEB placed me on the TDRL. Should I still consult with the OSC? Yes. TDRL cases are required by law to be evaluated every 6 to 18 months. This evaluation may be very brief and you need to be aware of important considerations before you begin on the TDRL. Also, you may be able to successfully challenge the decision to place you on temporary rather than permanent retirement. Your OSC counsel can provide you with information and advice about the TDRL review process.

h. How do I prepare for my TDRL reevaluation? Obtain and maintain copies of all your medical records after your initial PEB. In most situations you should provide a copy to your PEBLO and bring a copy to your TDRL medical evaluation. Maintain current contact information with your PEBLO and the Army Physical Disability Agency. Failure to do so could jeopardize your entitlement to disability retirement benefits. Attend an OSC legal briefing by teleconference or in person.

i. Where will my reexamination take place? In most cases you will be referred to the MTF closest to your home. The MTF commander is responsible for conducting the examination at his/her facility or scheduling it at another federal medical facility or civilian hospital/clinic at or near your home.

j. What do I have to bring to my reexamination? Bring copies of all of the medical records which document the treatment you have received since being placed on the TDRL or since your last TDRL reevaluation. This includes military, civilian, and VA

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records and all medication/pharmacy records. Your records will be reviewed by the physician who examines you and will be included in the medical documents forwarded to the PEB. Failure to provide relevant medical records may adversely impact the decision in your case. Contact the OSC if you have questions about whether to provide some or all of your medical records as some records may not be relevant.

k. While on the TDRL, I developed a new condition or an old condition that was not previously found unfitting has worsened. Are they compensable? A determination of fitness and compensability will be made on all diagnoses in the TDRL reevaluation. If you are determined fit for the condition for which you were placed on the TDRL but unfit for a noncompensable condition incurred while on the TDRL, you will be separated from the TDRL without entitlement to any disability benefits. Conditions diagnosed during the TDRL examination that were not found to be unfitting in the original PEB decision may be compensable. The condition must be unfitting and either be caused by the condition for which you were placed on the TDRL or directly related to its treatment. Alternatively, the evidence in your records establishes that the condition was incurred in the line of duty prior to your temporary retirement and was an unfitting disability at the time you were placed on the TDRL. You may be eligible for VA benefits for conditions that are not considered compensable by the military.

l. I disagree with the results of my TDRL reevaluation. Can I appeal it? Yes. Contact the OSC for assistance with appealing your TDRL examination results. The MTF must provide a complete TDRL report that describes your present condition and functional impairments. Full examinations are not typically required for periodic TDRL reevaluations. However, the commander of the MTF may refer a TDRL examination to a MEB for complex medical conditions. You will have the opportunity to review and comment on the report of the examination before it is approved by the MTF commander and forwarded to the PEB.

m. How will the final determination be made in my case? A medical evaluation will be completed and provided to you for review. The examination report will then be sent to the PEB for adjudication. You will be afforded the opportunity to appeal the PEB's findings before your case is finalized. The OSC is available to assist you should you decide to appeal.

n. I have requested a formal PEB hearing and representation by appointed military counsel. What should I do next? While the PEB will forward your information to our office, we encourage you to contact us once you request a hearing. Once you demand a formal hearing, the PEBLO will send your election to the PEB and a hearing date will be scheduled in your case. The PEB will send a copy of your case file to the OSC and an attorney will be assigned to represent you. The PEB must provide you and the OSC at least 10 days notice prior to your scheduled hearing date. The earlier you begin working with the OSC, the better are your chances to prevail.

o. If I am unhappy with the decision by the PEB at the formal hearing, will my attorney assist with an appeal? Yes. Our attorneys will explain your appeal rights and

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offer advice about whether an appeal is in your best interest. If requested, the attorney will help identify relevant evidence, draft the appeal, and ensure it is submitted in a timely manner.

p. What happens if I am found fit for duty by the PEB during my TDRL reevaluation?
The Army is different from the other services. If you are found fit for duty, it will be your choice whether to return to duty or not. The TDRL status and disability pay for Soldiers found fit for duty and who do not consent to be returned to duty will terminate.

3. This information paper is provided as a service to Soldiers in the TDRL process and is intended as general information. An OSC attorney is available to provide specific legal advice to Soldiers going through the TDRL process. Contact your local OSC for more information. If you do not know how to reach your local OSC, ask your PEBLO or visit our website at <https://www.jagcnet.army.mil/otjagosc>.

Approved by Ms. Joyce A. Hamel

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